

COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND

In the matter of	:	
Michael Evnin	:	
10009 Vanderbilt Circle, Unit #1	:	
Rockville, Maryland 20850	:	
	:	
Complainant	:	
	:	
vs.	:	Case No: 586-O
	:	
Decoverly IV Condominium Inc.	:	
c/o The Management Associates Inc.	:	
One Bank Street, Suite 250	:	
Gaithersburg, Maryland 20878	:	
	:	
Respondent	:	

DECISION AND ORDER

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland for hearing on October 29, 2003 pursuant to Chapter 10 B, Sections 10 B-5(i), 10 B-9(a), 10 B-10, 10 B-11(e), 10 B-12 and 10 B-13 of the Montgomery County Code, 1994, as Amended, and the Commission having considered the testimony and evidence of record, finds, determines and orders as follows:

Background

On July 2, 2003, the Complainant, Michael Evnin, filed a Complaint before the Commission on Common Ownership Communities for Montgomery County, Maryland wherein he alleged that Respondent abused its authority requiring Complainant to move the structure he had constructed on the rear patio of his condominium unit. In particular, the Complainant constructed a “cat cage” that Respondent, after holding a hearing before its Board of Directors, determined to be a

temporary structure and posed a “nuisance”. The Complainant disagreed and filed a complaint with the Commission.

The essential facts of the matter are not disputed. Respondent’s Board of Directors afforded Complainant a hearing on January 16, 2002 wherein Complainant requested the Board to approve his “cat cage” which had been constructed on his patio. On February 18, 2002, by a vote of 3 to 2, the Board denied Complainant’s request to permit the “cat cage” to remain and advised the Complainant that his request had been denied pursuant to Article X, Section 3 of the By-Laws. Complainant was given 15 days to remove the “cat cage.” On March 7, 2002 the Complainant requested an appeal of the decision and on May 20, 2002, the Board of Directors considered the Complainant’s appeal and informed Complainant that its original decision would stand and instructed the management agent to impose a fine if the “cat cage” was not removed timely. On June 26, 2002, the Complainant was advised that as a result of his failure to remove the “cat cage” before the Board’s June 17, 2002 meeting, a fine of \$50.00 was imposed. On July 1, 2002, the Complainant advised that he had contacted the Commission on Common Ownership Communities for Montgomery County, Maryland and filed a Complaint.

SUMMARY OF TESTIMONY AND EVIDENCE

Complainant put evidence into the record as to the nature and structure of the construction of a “cat cage”. The testimony was undisputed that the “cat cage” was plainly visible from the rear of the condominium building, that it was constructed to be situated on the patio, and that it provided a means for the cat to go from the kitchen into the cage on the patio. Through photographic evidence (Exhibit 1) and testimony, Complainant explained how the cage itself was taped and attached to a portion of the opening where the sliding door from his kitchen opened onto the patio. A cylindrical pipe like structure ran between the kitchen and the inside of

the cage which allowed the cat to travel between the kitchen and the cage. See Exhibit 1 (Photo 1, 2, 5).

The Complainant testified how he devised the construction of the “cat cage” in consultation with a person who had constructed a similar structure in an apartment complex. Essentially, the Complainant reworked the sliding glass door to place the structure between the doorframe that abuts to the partially closed sliding door, the bottom of which enveloped the cylindrical pipe-like structure. The Complainant’s position was that the structure, when so placed, was “permanent” and was not unsightly in appearance nor posed a nuisance to the community.

Respondent’s testimony essentially addressed the fact that the removable structure constituted a change to the exterior of the rear of the condominium unit and that it was temporary in nature and character in that the condominium unit’s basic construction was not altered in any fashion to be “permanent”. It was the opinion of the Board that the construction presented an “eyesore” and the Board was concerned that “alterations” such as this would establish a precedent for similar construction by other unit owners in the Community. Finally, the Respondent produced evidence that the Board of Directors considered the matter, inspected the premises, examined exhibits, and concluded in an initial hearing and on an appeal that the “cat cage” structure was temporary in nature and it violated the Condominium By-Laws and Rules and Regulations.

FINDINGS OF FACT

1. That at all pertinent times Complainant was a unit owner of the Respondent’s Condominium Association.

2. That Decoverly IV Residential Condominium Inc. is located in Montgomery County, Maryland.

3. Complainant was afforded an opportunity to be heard on his request for a determination that the “cat cage” was a permanent structure.

4. That the By-Laws of Decoverly IV Condominium Inc. have been duly recorded in the Land Records of Montgomery County, Maryland and that pursuant to Article X, Section 3(d) provides that no structural alternation, construction, addition or removal of any condominium unit or limited or general common elements shall be commenced or conducted except in strict accordance with the provisions of these By-Laws, or Title 11 of the Real Property Article of the Annotated Code of Maryland, and that Subsection (j) of Article X provides that no structure of a temporary character, trailer, tent, shack, barn or other outbuildings shall be maintained upon any limited or general common elements at any time.

5. The Rules and Regulations of Decoverly IV Condominium Inc. prohibits the maintenance of a nuisance or conduct constituting a nuisance.

6. The rear structure of the condominium where the sliding door meets the window frame was altered from its original condition and a structure was constructed and held in place with the use of the doorjamb, the sliding glass door and duct tape.

7. That the “cat cage” so constructed and maintained by the Complainant is a temporary structure.

CONCLUSIONS OF LAW

1. The Declaration of Covenants, Conditions and Restrictions, together with the By-Laws adopted thereto by the Respondent are an enforceable document. Markey, et al. vs. Wolf,

et al., 607 A2d 82, 87 (Md. 1992). The provision of the By-Laws that govern this dispute is Article X, Section 3.

2. Article X, Section 3, clearly provides in Subsection (j), that no structure of a temporary character... shall be maintained upon any limited or general common element at any time.

3. The Board of Directors, acting in its capacity as provided by the Respondents governing documents, concluded at a hearing and upon appeal that the "cat cage" as constructed constituted a temporary structure.

4. The Complainant has failed to persuade this panel to the contrary and has failed to prove that the "cat cage" was not maintained upon a limited or general common element or that it was not a structure of temporary character.

5. The Panel finds that the Complaint exercised his right to request the Commission on Common Ownership Communities to conduct an investigation and hold an administrative hearing on the merits of the matter. The Panel has determined that the fine of \$50.00 should not be imposed against the Complainant.

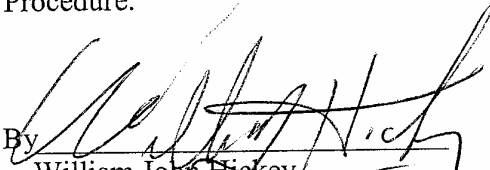
6. The Panel does not find that the Complaint made was frivolous and the Panel declines to award any requests, if any, for attorneys' fees.

ORDER/DECISION

Based upon the foregoing Findings of Fact and upon unanimous agreement of the Panel, it is this 17th day of March, 2004, ordered:

1. That the Complaint filed in Case No. 586-O is hereby dismissed with prejudice.

2. Any party aggrieved by the action of the Commission may file an appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days after the date of the entry of this order and in accordance with the Maryland Rules of Procedure.

By 
William John Hickey
Panel Chairperson, Commission on
Common Ownership Communities